

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET AT HENTY HOUSE, LAUNCESTON ON 31 AUGUST 2006**

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**Mr CHRISTOPHER BULLARD**, PRESIDENT, ASSOCIATION OF CONSULTING ARCHITECTS, TASMANIA WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Mr Bullard, thank you for your written submission and also your preparedness to appear before us to speak to that submission and take questions from us. It is important that at outset I indicate to you that if there are matters that you want to discuss with the committee relative to the agreement signed between Bryan Green and John White, we will be steering clear of that. I understand that your submission does not go in that direction. The DPP, of course, is conducting his own inquiry at the moment and we are respecting that process; we do not wish to prejudice where he is going.

**Mr BULLARD** - I am a private practising architect and President of the Association of Consulting Architects. There is some documentation here, one of which is from ACA National and one from ACA Victoria, which highlight what the association is.

**CHAIR** - You are happy to table those documents?

**Mr BULLARD** - Yes. You might not be familiar with what the association does; it represents employers in all industrial matters and goes to tribunals and inquiries and deals with government legislation on behalf of employers.

**Mr WILKINSON** - So the association acts as an advocate?

**Mr BULLARD** - It does. If, for instance, there is a union claim, a log of claims on architectural practice, then the matter is taken up through our solicitors, Phillips Fox and the tribunal has evidence given to it. We have 450-500 members throughout Australia, some of whom are the biggest employers of architects - nationally and internationally known employers. Obviously Tasmania is slighter smaller than that. I was trained in the United Kingdom and I have been a registered and practicing architect for 36 years. I ran my own practice in Launceston for 23 years - the Architects Workshop.

I believe that members would be familiar with the Tasmania Compliance Corporation Scheme for accreditation of building practitioners and I have copies if anyone wants one.

**Ms FORREST** - You have copies of the scheme?

**Mr BULLARD** - Yes.

**CHAIR** - That seems to be an elusive document.

**Mr BULLARD** - It is an elusive document and it is a document which was transmitted to me when we submitted to KPMG for their inquiry. After submissions closed they actually sent this document and said, 'We have just extended the submission period and this the

first time that we have actually seen it'. So this document has not been available until July this year. It was never available. We wonder how current it is.

**CHAIR** - Very few people, if any, have been able to obtain it by direct application to the TCC.

**Mr BULLARD** - Yes. One wonders whether it was a midnight-oil job.

**Ms FORREST** - You came into possession in July this year?

**Mr BULLARD** - Yes; the first time we had seen it. Many other organisations and ourselves have been calling for the scheme because we did not even know under what regulations we were running.

**CHAIR** - Can I suggest to you, Mr Bullard, as it notes at the heading, it is the summary produced by the department.

**Mr BULLARD** - That is all I have. I have not seen anything more.

**CHAIR** - That is fine. We will need to talk to the department about the full content of the submission.

**Mr BULLARD** - It does raise certain issues. The thrust of our proposition is in several areas. We are dealing with accreditation under the Building Act 2000. Section 25 says:

'If a building practitioner is a body corporate or partnership, the person who is to be accredited under this part is -

- (a) a director of the body; or
- (b) a partner in the partnership; or
- (c) a permanent employee nominated by the body or the partners.'

In other words for any corporation or any practice or partnership, you only have to have one person accredited. We will see in the submission that various things go astray as far as that is concerned. One architect who will need to be mentioned specifically in this regard is Morris-Nunn and Associates. I have not got a statutory declaration from them but I am sure they would be pleased to provide one. They were virtually forced to accredit all our architects and it was costing them thousands of dollars.

The next item I would like to refer to in the Building Act 2000 is section 28 on the next page, page 27:

'Period of Certificate

- (1) A certificate of accreditation remains in force for a period of three years after the date on which it is issued.
- (2) A certificate of accreditation expires if -
  - (a) it is not renewed; or

(b) the accredited building practitioner is no longer adequately covered by the required insurance.'

That is another thing to bear in mind because an issue that we are going to raise is that the Compliance Corporation sends out the initial fee for registration, trumpeted loud and long as \$450 plus GST. If you apply for a driving licence, a passport or any other document which is in force for a period, you pay the fee and is in force for that period. Why, then, are we being charged annually for accreditation which happens initially? If they could sustain an annual fee, why is the annual fee the same as the initial fee for setting up the accreditation?

Re-accreditation only requires architects to establish that they are insured, which means that we get a certificate of currency from our insurers - it is a fax that is sent through on the same day. The next one is that we must ascertain and certify our continuing professional development, which we do on a schedule we submit - so that is one letter. Form TCC we receive an invoice, please submit, and payment by. It is costing us \$450 plus GST every year to be re-accredited? However, we are accredited. Hypothetically, if I or any of my colleagues refused to pay the annual fee, which they have thought of doing, are they then de-accredited when they have already been accredited for three years? How do you become de-accredited?

The other issue is that no-one at the outset was ever told that there were ongoing annual fees. It was only later, in more recent times, that TCC have backflipped. You will notice the documents have no dates on them and they now say 'on the understanding it was paid annually'. Then I raised the issue of an individual architect, such as myself or a single practitioner, to be charged three times \$450 plus GST, in the range of \$1500, to be accredited for three years: is that reasonable?

**Mr DEAN** - What happens if you do not pay that annual fee? Has it been tested by you or anybody else to see what would happen?

**Mr BULLARD** - I would like to but I was concerned about what might happen. The Solicitor-General needs to be asked because it is a misinterpretation of the act. If I or any of my colleagues tested it, what would happen? We would receive a letter saying, 'We are withdrawing your accreditation.' What does that mean?

**Mr DEAN** - I have not looked at the act, but is it specifically indicated or identified in the act that if you do not pay that annual fee you become de-accredited?

**Mr BULLARD** - No. The problem is that if TCC notified an architect that his accreditation had been withdrawn, which I think they could say, they could then notify councils and then that architect would be unable to act as an architect. It usually takes four and a half years in court to prove a point. What is going to be the compensation? What is the person's livelihood going to suffer? Architects have asked us whether they should pay, because we believe it is a black hole. We believe it is just going into a black hole. We have asked on behalf of our members that KPMG have a trust fund for these moneys to go into; otherwise, we believe, it will disappear. There are millions of dollars there.

Have we tested it during the three years,? No. At this stage we have painfully paid up and subsequently had to charge our clients for the privilege. It all goes into overheads.

The other issue that turns on this is that we are the only State where architects who are registered have to be accredited under the Building Act. We are paying two registration fees; that is contrary to fair and reasonable trading. If we operate in another State we are disadvantaged. We have another tax on our heads that other architects do not have to comply with. At the Association of Consulting Architects, we are trying to get uniform legislation for architects in each State, just for registration, so that there is one registration nationally. This fowls up the whole situation again.

The other thing is that the Architects Act and the Building Act 2000 are in incompatible at the moment. So we run under two separate acts. The one way that you could tweak the Building Act now is to write an amendment to say that architects who are registered under the Architects Act are deemed to be accredited under the Building Act, provided they maintain their registration under the Architects Act.

**Mr WILKINSON** - Alternatively, Chris, you might have a system where you have something like the Pharmacy Board or the Nurses Registration Board. Let us call it the Building Board. If an architect wants to be accredited, that board goes to the Architects Association and asks if this person has the necessary qualifications. The Architects Association writes back and says yes and that person is then accredited.

**Mr BULLARD** - That is how it is done. It costs me \$52.65 per year to be registered. I hand that document over. It is the Architects Registration Board.

**Mr WILKINSON** - It is probably a bit easier for architects or engineers because they have their professional bodies already in place, but who should be the body to look after the builders?

**Mr BULLARD** - I believe there should be a registration board, but I believe that it may have to be a government department. I can see that this might have to be an experiment. Builder's registration is absolutely essential. It was tried initially and they asked councils to be the compliance people, to make builders comply. They spat the dummy because it cost them money to do something that they are not set up to do. I believe that it should be under a government department.

**Mr WILKINSON** - Like Workplace Standards?

**Mr BULLARD** - Yes, but we come under so many acts. We are just going to come under the Professional Standards Act. We come under consumer protection and the Department of Fair Trading. I am a member of the panel for the Master Builders, who set up arbitrators under the Commission for Fair Trading. There are five of us: an architect, an engineer, a quantity surveyor, a surveyor and an academic who is a legal specialist. We are already set up to operate on behalf of the Master Builders' Association for any of their contracts and they come to us for arbitration. That is what the Master Builders have set up. What panel does TCC have? Who are they? What is their standing and how do they operate? We have only just found out that what they should have, but we do not believe that they have it.

We are coming back to the issue of certification, accreditation and payment of fees - onerous, unwarranted and quite frankly unnecessary because we are legislated out of our

brains. We can be done every which way and upside down. As directors we come under company directors acts. You name it, we are there. We need, as professionals, five years of university training and two years to be trained in an architect's office before you can even take a registration exam, so a minimum of seven years - as much as a doctor - before you put your shingle up. No-one puts their shingle for three to five years. Why? They need the practical experience, so you could say it is a 10-year slog, having gone through a high academic requirement and then through several academic and registration procedures. There is a national architects' accreditation board which sets the standard for universities. Every architect has to comply with that. Every architect is independently assessed by a panel of experienced architects and put you through the hoops, through an exam and an oral, two years after they have got their degree, so how much more do we need? I can understand it, but we find that draftsmen are being accredited up to the stage of architects, authorised by TCC to do work which only architects should be allowed to do - but that is another issue.

If you have had the registration board and Institute of Architect's submissions you would already know that.

**CHAIR** - We heard from them yesterday.

**Mrs SMITH** - We have certainly seen evidence that, in the early days when they were talking about compliance, architects and others had involvement in discussions as to how that would be managed. Was the issue of double accreditation discussed at that time by your association?

**Mr BULLARD** - I am not aware of any discussions. I have not been involved in that. In fact I believe it may have been before I became president of the association in Tasmania. To be honest, architects have been very cooperative. However, it is now two years of waiting for something to happen. You do not say a car is a dud when it first rolls off the line; you test it. We have waited a fair period. We waited 18 months to two years before issues were raised, although they were detailed and they are in the files. We have been asking questions and people have not had responses. I think you have to give someone a fair go to see if they can actually perform, but we now believe that none of the directors, or even the past director, had any knowledge or understanding of the building industry as such. It has just been set up.

**Ms FORREST** - Do you employ other architects?

**Mr BULLARD** - Yes.

**Ms FORREST** - Okay. Have you tested that by accrediting only one architect within the business?

**Mr BULLARD** - I am the only one accredited.

**Ms FORREST** - So the rest of them are not?

**Mr BULLARD** - I have another architect who works with me, but that raises other issues. It means that I am the only one authorised to sign any documents such as a building permit, and yet registered architects, if they are given authority by their company or partnership,

a senior architect looking after a job, then you can sign all the documents. This is a restriction of our ability and capacity to do that.

The other thing is that it contravenes the other architect's rights to be acknowledged as the designer. Even if my guy designs something, I have to write on the building application form that I am the designer. I sign as the director. What if one of my guys sticks his head above the parapet without being accredited? It could be tested through an award to Architects Workshop: who is the design architect? We cannot say he is design architect. Your natural rights of acknowledgment for the work you do is, again, contravened and that contravenes international legislation about intellectual property rights.

**Mr WILKINSON** - And that is quite important for architects, isn't it?

**Mr BULLARD** - Absolutely. We are in the intellectual realm. Our expertise is in design. Try to define what design is and people get into very difficult areas; it can only be proved on the ground, and everybody has their opinion.

This letter is from the Compliance Corporation. I received it on 17 July 2006 and it says, 'It must be remembered that the Tasmanian fee of \$450 is a flat charge applying to all accreditations'. A flat charge. If someone quotes you a flat charge what do they mean? Do they mean they are going to charge you \$1 500 if you turn around and say 'But you said it was a flat charge'. What if somebody came up to you and gave you a flat fee and said, 'I gave you a flat fee for only one drawing; now you have three drawings and I am charging a flat fee for every drawing. You say that was not your understanding. But it's a flat fee.

The case of Morris-Nunn and Associates is an absolute pearler. It is absolutely beautiful. The code of conduct is a laugh because it is a motherhood statement. Nothing in this document can be tested on the ground. There is no benchmarking for testing the code of conduct.

They talk about continuing professional development. Who provides it? Not TCC; they could but they don't. They never have. We pay for it. Our institute provides it. For example, I go to a lecture on the life-cycle design of a practice, run by our insurers from Melbourne. It is highly important stuff. We pay \$25 to \$30 every time we do it. We have to build up an accreditation level of 25 points at an hour per point, so on top of the fee you are paying you are also paying for that.

TCC says in their lovely little handout that they would like to be able to support CP - meaning for builders, not architects. Where is the money going? What if they said every time you went and you did a course that it was hoped these workshops will be subsidised so the building practitioners - they don't call us 'building practitioners' - enrolled can fulfil professional development needs. Well, thank you, but can I apply for even \$10 back from TCC every time I do a CP? No.

In that bundle of documents are various fees for various architects. Then someone had the temerity to ask me what if you were not satisfied with the fee. This is Morris-Nunn and Associates, who pay \$1 782 in one year because they had to register all their architects. They were given a corporate fee plus an add-on fee, wherever that comes

from, so they say, 'Why didn't you negotiate?' But it says flat fee. If the flat fee is a bit much can I have half a flat fee? So you have half a flat fee and so on and it is inconsistent. So Morris-Nunn pays \$1 485 in one year and \$1 732 in another - for different people, mind you. There are architects called 'building designers', so they have got it wrong. That has upset many people and sometimes they get it wrong more than once.

Peter Cripps of Cripps and Associates wrote a letter. I have a bundle of documents concerning inconsistency. It has been reported to me, and it has been reported in the press, that Johnstone McGee and Gandy were going to be charged something like \$7 000 or \$8 500. They went back and negotiated and I think it came down to about \$3 500 or \$2 500. They went back and negotiated and it came down to about \$1 500.

**CHAIR** - We have the figures they provided us with.

**Mr BULLARD** - Yes, you would have the figures. This is only hearsay. What I am saying is, where does it come from? Does that leave other engineers paying the full \$8 000 or \$7 500, which means that in any of their submissions to any department or individual they have to recoup that overhead, which means they are that much less competitive.

**Mrs SMITH** - One of the chief concerns with architects is that you have an act of 1929 that controls the process. You pay into your professional organisation. Quite clearly you have ongoing professional development as part of that process.

**Mr BULLARD** - Yes.

**Mrs SMITH** - One of the concepts of the new Building Act concerned protecting consumers with a process that allowed a consumer to go to a one-stop shop and say, 'I want to build a house and I need to confirm that particular people are accredited and have the skills I want'.

**Mr BULLARD** - Yes.

**Mrs SMITH** - Would you consider it fair and reasonable if there were a statewide organisation and that was their role? They would come to your organisation and say, 'Is Chris Bullard accredited?', and there would be a charge of say \$50 on that process because someone has to pay for that checking and putting it onto a State register. Would that be fair and reasonable?

**Mr BULLARD** - That is fair and reasonable on the basis that the Architect's Accreditation Board already holds the register. The problem is that they have been accrediting people who are not trained or registered architects, and giving them architect's accreditation.

**Mrs SMITH** - To others?

**Mr BULLARD** - Yes.

**Mrs SMITH** - The question we will have to check is whether under the 1929 act that is a contravention of the law.

**Mr BULLARD** - That is a contravention of the law. I would mind that they asked someone for an annual register of all architects, because it is already there. It is held by the board. It is accessible.

**CHAIR** - My best recollection is that the minister, Bryan Green, wrote to one of the architects' bodies - it might have been the RAIA or the institute - and indicated that the mere fact that an architect was on the register would be sufficient for the TCC to deliver accreditation. Are you aware of anything to that effect?

**Mr BULLARD** - No.

**CHAIR** - Because we have seen the document where the minister's letter identifies that fact.

**Mr BULLARD** - It is very simplistic. Instead of trying to reinvent the wheel badly and making it square they could have gone straight to the registration board and said, 'Give us the architects who are registered now under the act'. Then all those people registered under the Architects Act 1929 are deemed to comply. It's similar to building regulations. If you put up a brick wall instead of a block wall then it is deemed to comply, but it is called a block wall for this purpose. The only deficiency in the Architects Act is continued profession development, which we take on ourselves anyway. It is required by our institute.

**Mr WILKINSON** - Is that for insurance purposes? It is with law.

**Mr BULLARD** - Our insurers require us to do it. It is required left, right and centre. I do not know of anyone who does not, because they would be risking their neck, but you might possibly have someone running without professional indemnity insurance. I do not know of any architect that has and they certainly could not now.

**Ms FORREST** - Are you suggesting, if that was taken on board, that all the TCC or any authorising body need to do is determine if the architects are registered with the board? I think there is a requirement to have professional indemnity insurance, which could easily be checked. Should there be a varying fee structure for those applicants because of the perceived or real reduction in the amount of work that is required by the authorising body to process that application?

**Mr BULLARD** - Yes.

**Ms FORREST** - Not a flat fee that you talk about. If there is less work to do, there should be a lesser charge for architects but, say, slightly more for builder practitioners because they have to do more checks and balances.

**Mr BULLARD** - The other thing is that we pay to belong to the institute; we are paying for the institute to do the CP on top of what we pay, and we are registered anyway under the act. We are already paying for something we are not getting but which we were told we would get. The last thing we got from TCC was a lovely sheet; I think it was a newsletter of something like six pages. It noted all the places you can get CP: adult education, TAFE, university - you can go to the University of New England or RMIT. You can do what you like to get the points. But I could have found that out myself. I do not need someone to tell me. It is not relevant to me. On several occasions they say to



architects that your institute's CP is deemed to be okay, so if you do it on that basis, which is actually a tighter requirement, then TCC will accept that. So we do the institute's one. The institute actually keeps track of it and every fortnight or month you get another flyer saying there will be another CP event at your local whatever. Then they send you a certificate, register it on their register, and then send it to you at the end of the year. How simple is that; the institute does it.

**Mr DEAN** - You have talked about the inconsistency of fee charges and how some have been able to negotiate different fees. Have you or your body taken it up with the TCC to get their answer as to why they have done it?

**Mr BULLARD** - Not at this stage, because we were unaware of it. Each individual architect or company or partnership were trying on an individual basis to deal with TCC. ACA were unaware of that and had not received those complaints.

There were mumblings and grumblings. I assure you it would have happened at some stage, but we hadn't officially taken it up because it was not until the inquiries were triggered that we actively went and found out. People are too busy; they say, 'Oh, pay the fee and put it in the file and we'll deal with it sometime'. They are trying to get on with a life and a business. They're not trying to start legal arguments with people who have a few million dollars in their bank account.

**CHAIR** - You mentioned joint industry councils in your submission. Has your association been invited to participate in any joint industry council?

**Mr BULLARD** - With the Association of Consulting Architects, many individual architects are members of different associations, like the Building Practitioners and so on. Richard Crawford is on our committee, but he also chair of that committee, and the same nationally. We tend to get architects operating with different hats on.

**CHAIR** - Has your association been invited, though, to be a member of the joint industry council?

**Mr BULLARD** - No, we haven't.

**CHAIR** - I understand that was a proposition by the TCC in fact to send out the invitation.

**Mr BULLARD** - No, we haven't been approached.

**CHAIR** - Thank you very much for both the written submission and your time today, plus the further information you have provided to us.

**Mr BULLARD** - Thank you for the opportunity to speak.

**THE WITNESS WITHDREW**